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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,233	09/02/2003	Mario M. de la Guardia	19124.0002U1	4734

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NEEDLE & ROSENBERG, P.C.
SUITE 1000
999 PEACHTREE STREET
ATLANTA, GA 30309-3915

EXAMINER	
VENKAT, JYOTHSNA A	
ART UNIT	PAPER NUMBER
1615	

MAIL DATE	DELIVERY MODE
07/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/654,233	DE LA GUARDIA ET AL.	
	Examiner	Art Unit	
	JYOTHSNA A. VENKAT Ph. D	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 March 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) *1-9* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *12/23/03 and 7/16/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of election filed on 3/5/07 and IDS filed on 7/16/04 and 2/23/03. Claims 1-26 are pending in the application and the status of the application is as follows:

Applicants elected group V. Upon further review of applicant's remarks, groups I-III are joined and groups IV-VI are joined. Thus the restriction is between product and process of using the product.

Election/Restrictions

Inventions I or II or III (combined as one group) and IV or V or VI (combined as one group) are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case process for using the product as claimed can be practiced with another materially different product, which are hydrogen peroxide, phosphoric acid, styrene/PVP copolymer and water.

Applicant's election of group V in the reply filed on 3/5/07 is acknowledged. Because applicant did not distinctly and specifically point out the **supposed errors in the restriction requirement between product and process of using the product**, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/5/07.

Claims 10-26 are pending in the application and the status of the application is as follows:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 is unclear as to applicant's intent. Note that claim 10 recites " method of neutralizing relaxed hair". What is meant by " hair treated by the method of claim 10"? What is the meaning of this claim? Claim is ambiguous and detailed explanation is requested.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 10-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of WO 93/00882 ('882) and 6,231,844('844) and 4,871,530('530).

WO teaches neutralizing hair by applying hair relaxer and then applying neutralizing hair. These steps are known in the art. See paragraph bridging pages 8-9. See page 12, where the neutralizer is applied to hair and left on the hair. The neutralizer is used with chemical like calcium hydroxide, enzyme relaxers, and guanidine hydroxide. All these agents are known as no lye relaxers. The neutralizer product has acid and surfacatant. See page 13 and table 1. The difference between WO document and instant application is WO document does not teach applying neutralizer composition in the form of mousse, which has propellant. Patent '844 teaches hair mousse compostions having surfactant, propellant. See the abstarct, col.1, lines 44 et seq, see col.3, lines 5-25, see col.3, lines 30-35 for surfacatant, see col.5, lines 50 et seq and col.6, line s1-26 for propellant. Patent at col.6, line 33 suggests that pH adjusters can be added to compostions, See col.9, lines 50-52 also suggests that acids can be included in the compostions. Patent '844 also teaches at col.6, lines 22-25 that the propellants are contained under pressure in a suitable vessel such as pressed dispensing device, which is well known in the art. This meets the claimed requirement of claim 23. See also col.11, lines 65 through col.12. Patent '844 does not teach the limitation of claim 22. Patent '530 also teaches foaming compostions having propellant and surfactant. See the abstarct, see col.1, lines 15-21, see col.2, lines 47-58, see

paragraph bridging col.s 4-5 for various propellants and patent teaches mixtures of propellants. Patent at paragraph bridging col.s 15-16 suggests that other propellants can be used, which includes carbon dioxide. See also col.15, lines 35-53. See col.3, lines 15-55 for surfacatant. Patent at col.14, lines 44-51 teaches that these foaming compositions, can be used after permanent waving.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made relax the hair and neutralize the hair taught by WO document and modify the neutralizing step using the hair mousse using surfactant, propellant and acid taught by patent '844 and use it after waving since patent '530 teaches analogous foaming compositions having the combination of surfactant, propellant can be applied to hair after hair is relaxed (waving). One of ordinary skill in the art would be motivated to use the mousse compositions after the hair is treated with a relaxing agent since hair mousse compositions provide good style, good feel to the hair and less flaking tendency. This is prima facie case of obviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JYOTHSNA A VENKAT Ph. D
Primary Examiner
Art Unit 1615

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